EIGHTH LEGISLATURE YAP STATE RESOLUTION NO. 8-75

STATE OF YAP

THIRD REGULAR SESSION, 2013

A RESOLUTION

Instructing the Yap State Foreign Investment Board pursuant to 8 YSC 304(c) to cancel the Yap State Foreign Investment Permit issued to the Exhibition and Travel Group (ETG), because the issuance of the Permit by the Director of the Department of Resources and Development violated the State Government Ethics Act and is therefore not valid to allow ETG to engage in business in the State of Yap.

WHEREAS, the State Government Ethics Act was created "to prescribe standards of ethical conduct for all government employees, in order that the people of the State of Yap may have complete faith and confidence in the integrity of their government" (8 YSC 302); and

WHEREAS, section 304(a) of the Act states that:

"(a) Employees shall avoid any action which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding government efficiency or economy;

(4) Losing complete independence or impartiality of action;

(5) Making a government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the government."; and

WHEREAS, section 304(c) of the Act allows the State to void any action taken by a state employee that violates the Act, as well as to hold the employee personally liable for any damages, costs, and other consequences that the State incurs as a result of voiding the employee's unethical actions; and

WHEREAS, section 303 of the Act defines employees as "all employees of the State Government, including those persons covered by or exempted from the State Public Service System Act."; and

WHEREAS, the Director of the Department of Resources and Development is an employee of the State Government whose actions are subject to the Act pursuant to section 303 of the Act; and

WHEREAS, the issuance of the Yap State Foreign Investment Permit by the Director of the Department of Resources and Development (hereinafter Director) to the Exhibition and Travel Group (hereinafter ETG) on and received by ETG on April 26, 2012 violates Section 304 of the Act as follows:

1. Pursuant to subsection (a)(2) on "giving preferential treatment to any organization or person," the following items are evidence of how the issuance of the Permit to ETG represented and continue to represent the Director giving preferential treatment to ETG in violation of subsection (a)(2): the Director approving and issuing the Permit to ETG despite overwhelming public opposition including the adoption of Resolutions by the Legislature; and the Director approving and issuing the Permit to ETG despite ETG proposing to engage in illegal activities in the State of Yap such as gambling as indicated in their investment agreement proposal to the Governor prior to the issuance of the Permit, and as specified in the Strategic Framework Agreement signed by the Governor and ETG;

2. Pursuant to subsection (a)(3) on "impeding government efficiency or

economy," the following items are evidence of how the issuance of the Permit to ETG represented and continue to represent the Director impeding government efficiency or economy in violation of subsection (a)(3): the Director's instructions to his staff not to release information on the status of the ETG application for a Yap State Foreign Investment Permit; the Director's total disregard of the overwhelming public opposition including a petition by more than 1,500 people and residents of Yap State against the ETG proposal; the Director's complete disregard of Resolutions adopted by the Legislature against the ETG proposal; the Director's acceptance of ETG's initial proposal to the Government to engage in business activities including illegal activities such as gaming and casinos; and the Director's preferential treatment for the ETG application for a Permit resulted in

the Legislature being kept in the dark while the Governor and the Council of Pilung continued to negotiate with ETG. Such actions adversely affect government efficiency by causing uncertainty and confusion amongst relevant government agencies, undermining continued cooperation and unity in the State Leadership, and preventing a more efficient and a more orderly review of the documents and investment proposal by ETG by the entire Yap State Government exclusive of the Judiciary Branch, and the public; and

3. Pursuant subsection (a)(6) on "adversely affecting the confidence of the public in the integrity of the government," the following items are evidence of how the issuance of the Permit to ETG represented and continue to represent the Director adversely affecting the confidence of the public in the integrity of the government in violation of subsection (a)(6): the

Director's disregard, before issuing the Permit, of the outcry of the people of the State of Yap comprising of more than 1,500 petitioners against the ETG proposal, the adoption of Yap State Resolutions No. 8-29 and 8-31 by the Legislature on January 26, 2012 and April 19, 2012, respectively, against the ETG proposal, and the Governor's specific instruction to the Director in a State Leadership meeting not to issue the Permit; and, following the issuance of the Permit, the Director's disregard of the people's continued opposition to the ETG proposal as the people of Yap continued to raise their concerns and oppositions to the State Leadership as follows:

(i) May 3, 2012 the State Leadership was petitioned by an additional 172 petitioners against the ETG proposal;

(ii) May 21, 2012 a meeting designated

as a Town Hall Meeting was held at the Colonia Community Center which supposedly to educate the general public on the proposed ETG project was limited to only two hours, and during which meeting the Acting Attorney General in the presence of the Director informed the people that the Permit had not been delivered to ETG when in fact ETG had received the Permit on April 26, 2012 as noted and initialed by ETG agent on the Permit, and further at the conclusion of the meeting there were questions those in attendance still wanted to ask;

(iii) July 31, 2012 the Yap Women's Association forwarded to the State Leadership a petition by the "Bpin nu Waab" from the respective municipalities of Yap and members of the general public of the State of Yap, stating their strong opposition to the ETG proposal that "they strongly feel that this investment

is not right for the State of Yap. Therefore, we are humbly pleading to your good office to put a stop to this Proposed Development of ETG.";

(iv) August 9, 2012 more people of Yap petitioned the State Leadership "NOT to permit the Exhibition and Travel Group (ETG) to invest in the whole State of Yap. We have listened to all available information on ETG's investment plan in Yap and we know that their investment is not good for Yap and her future generations.";

(v) September 18, 2012, Yap State Resolution No. 8-53 was adopted by the Legislature "calling on the Governor to submit a written notice to Exhibition Travel Group (ETG) to void the Investment Agreement between the State and ETG and to disapprove any and all master plans from ETG for investment in Yap

State.";

(vi) October 1, 2012, the Governor of the State of Yap wrote the Chairman of ETG to "reconsider the proposed project, if not to dissolve the Investment Agreement and any legal documents preceding it." and in the letter the Governor made reference to the letter of the Dalip Pi Nguchol "commanding my administration to 'prohibit the Exhibition and Travel Group from proceeding with its intended Project for Yap State'" and Yap State Resolution No. 8-53 requesting him to void the Investment Agreement, and that "It is my belief that the attached letter and resolution, together with other attachments herewith, are indicative of a resistance to your proposed project in the State and I feel that it is my responsibility to approach your organization before you risk any

greater financial investment going forward. I fear that the prospects of ETG crafting a profit-making enterprise in Yap may be very low. It seems that ETG, if it decides to go forward with the project, will encounter a huge amount of resistance from the public and by way of laws passed by the Legislature which will all but ensure that ETG cannot do business in the State of Yap."; and

WHEREAS, on November 27, 2012, a petition addressed to Speaker Falan was received by the Yap State Legislature from a group calling themselves the Yap Awareness Project (Y.A.P.). This petition has over one thousand signatures, and it stated in relevant parts as follows: "In lieu of recent events aired in the legislative chamber and efforts to cease economic development initiatives spear-headed by our Governor, Council of Pilung and National Government. It is our wish to let it be known that we do not join or embrace the recent resolution that came out of the legislature

that call for the cessation of the current proposed foreign investment initiative and that we do not support the position of others to recall our Governor." It went on to say that "Therefore, we feel it is in the best interest of Yap State and its people to allow all our leaders and their entities to continue their mandated responsibilities of promoting foreign investments according to our laws and policies. Furthermore, for all our leaders to come to a united front to explore and seek all and every possible way that we could benefit from the current proposed investment."; and

WHEREAS, petitions by the Y.A.P group and others previously clearly showed that the confidence of the public in the government is affected adversely. 8 YSC 304 (a) (6) specifically voids any action by a State employee if his action affects adversely the confidence of the public in the government; and

WHEREAS, on February 5, 2013, and in response to the Y.A.P. group's petition, the whole membership of the Yap State Legislature met with the group to discuss the wishes expressed in the petition. It was in this meeting that the Y.A.P. group was informed that Yap State Legislature Resolution No. 8-53 was adopted at the

request of the Governor to support his letter to the Chairman of ETG dated October 1, 2012. The mandate that the members of the Yap State Legislature understood from this meeting is for the State leaders to come to a united front; and

WHEREAS, on March 21, 2013, the Yap State Legislature met with the Governor to discuss the best way forward on the proposed ETG project since we have different groups with different views on the project. It was decided that the Governor should have the Foreign Investment Permit for ETG be voided, and that the Governor should get back to the Legislature on April 16, 2013. This meeting did not take place because the Governor was to go off-island on medical purposes on that day; and

WHEREAS, the Chief of Rumung on the Council of Pilung has informed the Council that he was given US$3,000 by Mr. Yang Gang, the ETG agent in Yap, and that as a member of the Council of Pilung it would constitute a bribe which is a state crime under our Yap Penal Code if the Chief were to receive the money as consideration to influence his decision to assist ETG by influencing the people of Yap to lease their lands to ETG; and

WHEREAS, Mr. Deng Hong, Chairman/President of ETG has been in world news to be under investigation by the government of China for graft and has been in custody since early March of this year which supports the assumption that the payment of money to the Chief of Rumung was a bribe and consistent with the Chinese Government investigation of Deng Hong; and

WHEREAS, the purpose of the Yap State Foreign Investment Act is "to encourage foreign investment within the State of Yap in a manner which serves the economic, social, and cultural interest of the State of Yap"; and

WHEREAS, accepting a large sum of money by a government official and traditional Chief from ETG and knowing that ETG is a Chinese entity and that the Chinese Government is investigating the Chairman of ETG for graft and that the Chairman has been in custody for corruption and illegal land grabs are factors that will clearly not serve the economic, social, and cultural interest of the State of Yap; and

WHEREAS, the combination therefore of the Director's violation of the State Government Ethics Act together with the criminal activity in which Mr. Deng Hong, Chairman of ETG, is involved in would clearly constitute

a lack of confidence of the public in the integrity of the government if the Permit is not cancelled by the Yap State Foreign Investment Board which was created by Yap State Law No. 8-25 to review, approve and issue a Yap State Foreign Investment Permit, among other things, in lieu of the Director; now, therefore,

BE IT RESOLVED by the Eighth Legislature of the State of Yap, Third Regular Session, 2013, that on behalf of the people and government of the State of Yap, the Legislature hereby instructs the Yap State Foreign Investment Board pursuant to 8 YSC 304(c) to cancel the Yap State Foreign Investment Permit issued to the Exhibition and Travel Group (ETG), because the issuance of the Permit by the Director of the Department of Resources and Development violates the State Government Ethics Act for the reasons explained in this Resolution and is therefore not valid to allow ETG to engage in business in the State of Yap; and

BE IT FURTHER RESOLVED that if the Yap State Foreign Investment Board fails to cancel the Permit within twenty calendar days after receipt of a certified copy of this Resolution for whatever reasons, then this Resolution shall operate to cancel the Permit pursuant to section

304(c) of the Act which allows the State to void unethical actions by a State employee; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Chairman and members of the Yap State Foreign Investment Board, the Governor, the Attorney General, the Chief of Commerce and Industries, the Chief of Land Resources, the Chairman of the Council of Pilung, and the Chairman of the Council of Tamol.

Adopted: May 02, 2013

Henry Falan
Speaker

5/2/13
Date

Attested to:

Dee N. Libian
Chief Clerk